

(1997) 10 MAD CK 0013
In the Madras High Court

Amirthakumar

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 22-10-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 4(1), 55(1), 5A, 6

Citation : (1998) 3 MLJ 240

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of writ of certiorarified mandamus calling for the records relating to A1 11467/93,

dated 6.2.1997 passed by the 2nd respondent and the consequential order in G.O.Ms.No. 128, Highways Department, dated 28.4.1997 issued

by the 1st respondent and quash the same and forbear the respondents from taking any further proceedings in pursuance of the said notification.

2. Heard Mr. Peppin Fernando learned Counsel for the petitioner and Mrs. T. Kokilavani learned Government Advocate for the respondents.

There is no dispute that the land has been acquired for public purpose. The contentions raised by the learned Counsel for the petitioner are:

(i) the acquisition is vitiated as no notice under Sections 4(1) and 5-A read with the rules framed under the Act had been served and

(ii) the decision to acquire the petitioner's land is neither warranted nor justified as vacant land is available on the opposite side for extending the

road and for road improvement.

It is to be pointed out that the petitioner had challenged the 5(A) enquiry report submitted by the Land Acquisition Officer and the subsequent

declaration issued u/s 6 of the Act. Section 4(1) notification had not been challenged in this writ petition.

3. The petitioner's land besides others has been acquired for the public purpose of improvement of road from Sripuram to Thatchanallur (via)

Sivasakthi Theatre. The Government issued Section 4(1) notification in G.O.Ms.No. 194, P.W. (Highways) (HSL) Department, dated 4.3.1996

and the same has been published in the Government Gazette dated 20.3.1996 Section 4(1) notification has also been published in two Tamil dailies

having circulation in the locality. The substance of Section 4(1) Notification was also published in the locality on 30.4.1996.

4. It is admitted by the petitioner that no objection had been sent in term's of Section 5-A of the Act within 30 days from the date of publication of

the Notification u/s 4(1) of the Act, As such there was no occasion for the Land Acquisition Officer to serve a notice of hearing u/s 5-A of the Act.

The petitioner having omitted to raise objections cannot complain that no notice u/s 5-A had been served on him. Curiously the learned Counsel

for the petitioner contended that Section 4(1) read with Section 5-A and the rules framed by the State Government provides for service of notice

u/s 4(1) and Section 5-A personally on the landowner. This contention, in my considered view cannot be sustained. Section 4(1) does not

contemplate personal service of notice on the land owner like the petitioner, so also Section 5-A of the Act. If the petitioner had filed an objection

within 30 days from the date of person interested in the land and within the time prescribed in Sub-section(1) of Section 5-A, the Collector shall fix

a date for hearing the objections and give notice thereof in Form B to the objector as well as to the department or company requiring the land.

Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed

by the Collector a statement by way of answer to the objections and may also deputy a representative to attend the enquiry.

A conjoint reading of Section 4(1), Section 5-A, Rule 2 and Rule 4 makes it abundantly clear that so personal service of notice of Section 4(1) as

well as 5-A is provided for. A notice u/s 5-A is required to be served, if the petitioner had filed objections within 30 days from the date of

publication of Section 4(1) Notification. The petitioner had not admittedly submitted objections and hence the first contention raised by the learned

Counsel for the petitioner cannot be sustained.

5. As regards the second contention, which has been repeatedly hold by this Court as well as by the Apex Court that the alignment of the road or

the publication of Section 4(1) notification, then its incumbent on the part of the ""Land Acquisition Officer to serve a notice of hearing of objections

u/s 5-A of the Act. If the petitioner had not raised his objections within 30 days from the date of publication of the notification i.e., viz., 30.4.1996

being the last date of Section 4(1) notification he has to blame himself and his omission is fatal.

6. The learned Counsel for the petitioner contended that rules framed by the State Government provides for service of notice on the landowner.

This is also a factual misconception as the rules have been amended on 24.7.1997 while the learned Counsel relied upon an old edition of Land

Acquisition Manual. Rule 2 of the Tamil Nadu Rules framed u/s 55(1) of the Land Acquisition Act, 1894 reads thus,

Rule 2: The Collector shall cause public notice of the substance of the notification under Sub-section(1) of Section 4 in Form A. The notice shall be

published at convenient places in the locality and copies thereof fixed up in the offices, of the Collector and the Tahsildar.

Sub-Rule (b) of Rule 4 which is also relevant reads thus:

Rule 4(b): If any objections are received from a suitability of land to be acquired is always the subjective satisfaction of the respondents. It is

obvious the road is being improved at the instance of the Highways Department which has necessary expertise with it to fix alignment of the road

and this Court sitting under Article 226 of the Constitution will not be justified to interfere in the absence of mala fides with the selection of the land

or the widening of the Road or the alignment of the road which is being improved. In the circumstances the second contention raised by the learned

Counsel for the petitioner also fails.

7. Consequently W.P.No. 15723 of 1997 is dismissed and W.M.P.No. 24926 of 1997 is also dismissed.